

BRENNEKE DECLARATION

EXHIBIT I

From: adrienne.scheffey@akerman.com
To: [Chien, Marsha \(ATG\)](#); [Brenneke, Andrea \(ATG\)](#); ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com
Cc: [Polozola, Lane \(ATG\)](#); whitehead@sbg-law.com; roe@sbg-law.com; berger@sbg-law.com; [Hall, Caiti \(ATG\)](#); joe@3brancheslaw.com
Subject: RE: Washington v. NWDC - Missing Docs
Date: Friday, January 17, 2020 11:17:32 AM
Attachments: [Wonhoff Exhibit 263 - 082219.pdf](#)

Marsha,

Upon reviewing the transcript, we do not agree that Judge Bryan agreed the letter should be provided unredacted at the pre-trial conference. Further, we have provided a detailed description as to why the letter is not responsive to any of the criteria GEO was ordered to produce following the mandamus proceedings. Indeed, the document is not relevant to the State's case and is not broken down or limited to the Northwest ICE Processing Center. Furthermore, the document is not relevant to the State's claims that GEO was unjustly enriched, as it simply states the status of the costs of litigation and the costs that ICE *could* incur nationwide if litigation were to change its operating practices. Indeed, to the extent that the State argues that information about the costs of litigation are relevant to its claims—GEO should be able to rely upon those costs as an offset to any disgorgement analysis. GEO further notes that this document was provided by ICE and ICE made redactions. Thus, ICE would likely need to be afforded an opportunity to weigh in on the document.

Please know that should the State file a motion seeking to unredact the letter to ICE, GEO will likewise move to unredact the attached document. As the State has previously argued, this case was not brought on behalf of the department of L&I. ECF 118 at 5. Thus, the attached document cannot be considered to have been created in preparation for this litigation. Because the document does not constitute work-product, the document should be unredacted as there is no question that the nature of this suit "puts the legal advice [L&I] received directly in issue." *Hearn v. Rhay*, 68 F.R.D. 574, 583 (E.D. Wash. 1975); *McCarthy v. Barrett*, No. C09-5120RBL, 2013 WL 12416487, at *1 (W.D. Wash. Jan. 2, 2013) ("Permitting the City to both rely on the advice it obtained and to shield the substance of that advice from further inquiry would be manifestly unfair."). Here, the State has specifically put at issue whether it was "unjust" for GEO to not apply the WMWA to detainees. Thus, the *Hearn* test applies.

Best,

Adrienne Scheffey

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From: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>

Sent: Wednesday, January 15, 2020 11:57 AM

To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptnr-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptnr-Den)

<colin.barnacle@akerman.com>; joan@3brancheslaw.com

Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com

Subject: RE: Washington v. NWDC - Missing Docs

Adrienne,

I'm writing to follow up regarding GEO's letter request to ICE for an equitable adjustment, labeled 2018-ICLI-000052. Again, the State believes the document to be directly responsive to the State's requests and no privilege or work product justifies GEO's redactions. The Court suggested GEO provide the letter unredacted at the pre-trial conference.

Please either provide the letter unredacted by Monday at 8am or let us know if you will require the State to file a motion.

Thanks,
Marsha

From: adrienne.scheffey@akerman.com <adrienne.scheffey@akerman.com>

Sent: Wednesday, January 08, 2020 5:31 PM

To: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; ashley.calhoun@akerman.com; christopher.eby@akerman.com; colin.barnacle@akerman.com; joan@3brancheslaw.com

Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com

Subject: RE: Washington v. NWDC - Missing Docs

Andrea,

Please find attached additional correspondence related to the State's December 13th letter.

Best,

Adrienne Scheffey

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From: Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>
Sent: Tuesday, December 31, 2019 4:17 PM
To: Scheffey, Adrienne (Assoc-Den) <adrienne.scheffey@akerman.com>; Calhoun, Ashley (Assoc-Den) <ashley.calhoun@akerman.com>; Eby, Christopher (Ptrn-Den) <christopher.eby@akerman.com>; Barnacle, Colin (Ptrn-Den) <colin.barnacle@akerman.com>; joan@3brancheslaw.com
Cc: Chien, Marsha (ATG) <marsha.chien@atg.wa.gov>; Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; whitehead@sgb-law.com; roe@sgb-law.com; berger@sgb-law.com; Hall, Caiti (ATG) <Caiti.Hall@atg.wa.gov>; joe@3brancheslaw.com
Subject: FW: Washington v. NWDC - Missing Docs

Dear Adrienne,

Here is the prior communication I was referencing.

This particular exchange occurred prior to Washington's win in the 9th Circuit and the denial of the Writ of Mandamus, which resulted in the requirement that GEO produce all financial records related to the VWP at the NWDC pursuant to ECF 133. In addition to what Marsha cited, the document we are requesting includes calculations and requests for equitable adjustment/reimbursement/renegotiation of the terms of the contract that make it responsive to at least all of the following RFPs:

REQUEST FOR PRODUCTION NO. 40: To the extent not previously produced, and to the extent they exist, please produce the NWDC's financial statements, Profit and Loss statements, and budget, and budget to actual analysis on a quarterly or annual basis from 2005 to present, including all *documents that set forth the detailed operating costs of the facility, Voluntary Work Program costs, labor costs, and payroll expenses as well as all details of revenue, contract payments and reimbursements for the NWDC.*

REQUEST FOR PRODUCTION NO. 43: To the extent not previously produced, and to the extent they exist, please produce all documents that contain *financial analysis, financial models, analysis of profits earned, valuation of the work performed, or other assessments of the Voluntary Work Program at the NWDC from 2005 to present.*

REQUEST FOR PRODUCTION NO. 51: Please produce all documents, to the extent they exist,

containing financial performance analyses, financial models, or other financial evaluations prepared in connection with or for the purpose of GEO Group's offer(s) and bid(s), *and negotiations related to amendment(s) and renewal(s)*, of contracts related to the NWDC from 2005 - present.

All the best,

Andrea Brenneke
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
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Seattle, Washington 98104
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From: Chien, Marsha (ATG)
Sent: Wednesday, June 05, 2019 8:59 AM
To: shannon.armstrong@hklaw.com
Cc: Polozola, Lane (ATG) <Lane.Polozola@ATG.WA.GOV>; Baker, La Rond (ATG) <larond.baker@atg.wa.gov>; Brenneke, Andrea (ATG) <andrea.brenneke@atg.wa.gov>; matt.donohue@hklaw.com; Whitehead, Jamal <whitehead@sgb-law.com>; kristin.asai@hklaw.com; Devin Theriot-Orr <devin@sunbird.law>; Andrew Free (andrew@immigrantcivilrights.com) <andrew@immigrantcivilrights.com>
Subject: Washington v. NWDC - Missing Docs

Shannon,

I am writing to express concern that GEO's response to the State's discovery requests is not complete. We recently received the attached document, which appears to be part of GEO's request to ICE for an equitable adjustment. It was obtained from ICE in response to a FOIA request.

The document is squarely responsive to RFP No. 12, which requested all communications about the VWP with ICE. As such, we request that GEO provide the complete, unredacted document as well as any related communications with ICE. If any privileges apply, please specify them.

Kind Regards,
Marsha

Marsha Chien

Assistant Attorney General
Washington Attorney General's Office - Civil Rights Division
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